



Agenda Date: 06/20/01  
Agenda Item: 3C

## **STATE OF NEW JERSEY**

### ***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

#### CABLE TELEVISION

IN THE MATTER OF THE PETITION OF RCN OF )  
NEW JERSEY, INC. FOR APPROVAL OF )  
CORPORATE RESTRUCTURING AND TO )  
TRANSFER CERTIFICATES OF APPROVAL )

#### ORDER OF APPROVAL

DOCKET NO: CM00070509

(SERVICE LIST ATTACHED)

BY THE BOARD:

On July 14, 2000, RCN of New Jersey, Inc. ("RCN" or "Petitioner"), a Pennsylvania corporation, petitioned the Board of Public Utilities ("Board"), pursuant to the provisions of N.J.S.A. 48:5A-19 and 40 and N.J.A.C. 14:17-6.10 and 6.8, seeking Board approval, nunc pro tunc, to engage in a corporate reorganization and to transfer Certificates of Approval (the "Transaction").

#### BACKGROUND

Petitioner completed the aforementioned Transaction prior to Board approval. Petitioner also completed, prior to Board approval, the transaction described in another petition, filed with the Board on July 30, 1999, in Docket No. CF99070499. That petition, which sought approval for the Pledge of Stock and Property, and to enter into certain guarantees, is also being considered by the Board on this June 20, 2001 agenda. For both transactions, this failure to obtain Board approval prior to a merger, consolidation and encumbrance, as required by N.J.S.A. 48:5A-38 and 40, resulted in the levy of a penalty in the amount of \$25,000.00. This penalty is more fully described as part of Docket No. CC98070467, Regulatory Compliance Issues, and was approved by the Board at its June 6, 2001, agenda meeting.

In a related petition filed with the Board on August 29, 2000, in Docket No. TM00080596, RCN Telecom Services, Inc. ("RCN Telecom"), RCN Telecom Services of New Jersey, Inc. ("RCN of NJ"), and RCN Long Distance Company ("RCN LD") seek approval of the Board to merge RCN of NJ and RCN LD with and into RCN Telecom. This matter is fully described in RCN's petition filed with the Division of Telecommunications, also being considered by the Board on this June 20, 2001 agenda. The cable television reorganization described in Docket No. CM0007050509 and the telecommunications reorganization described in Docket No. TM00080596 are related because those transactions, together, consolidate former cable television subsidiaries and telecommunications subsidiaries of RCN Corp. into one common entity, RCN Telecom.

The following description and background is, in part, based upon representations made by the Petitioner, in its petition, and in answers to subsequent discovery questions.

RCN, with local offices located at 279 Amwell Road, Somerville, New Jersey 08876, owns and operates a cable television system (the "System") serving approximately 74,770 subscribers in 29 municipalities in Hunterdon, Somerset, Morris and Mercer Counties, New Jersey.<sup>1</sup>

The Petitioner also owns an 80.355% interest in Home Link Communications of Princeton, L.P. ("Home Link"),<sup>2</sup> a New Jersey limited partnership. The remaining 19.645% interest is owned by the Kilgore Group. RCN is a wholly owned subsidiary of RCN Cable Systems, Inc. ("RCN Cable"), a Delaware corporation. RCN Cable, in turn, is wholly owned by RCN Corporation ("RCN Corp."), also a Delaware corporation. RCN Corp., with headquarters at 105 Carnegie Center, Princeton, New Jersey 08540, is a cable television Multi-System Operator ("MSO"), which, by itself or through subsidiaries, services approximately 125,000 basic subscribers in the United States.

As part of an overall reorganization of the corporate structure of RCN Corp., RCN will, along with other wholly owned subsidiaries of RCN Corp., merge into RCN Cable. That entity will simultaneously merge with and into RCN Telecom, a Pennsylvania corporation, to form one corporate entity that would be a direct, wholly owned subsidiary of RCN Corp.

All of the stock, assets and Certificates of Approval of RCN will be transferred to and be held by RCN Telecom. RCN Telecom will also become the sole general partner of Home Link. At the conclusion of the reorganization, RCN Telecom will be a direct subsidiary of RCN Corp. and will be the holder of the municipal consents and Certificates of Approval.

This transfer of Municipal Consents and Certificates of Approval, as required by N.J.A.C. 14:17-6.8 et seq., requires Petitioner to attach to the petition proof of service of notice of the proposed transfer to subscribers, municipalities, and utilities. However, the proofs of service of notice were dated May 19, 2001, long after the petition was filed and the transfer became effective.

According to the Petitioner, the purpose of the reorganization is to streamline the overall corporate structure of RCN Corp., by reducing the number of corporate subsidiaries. This is anticipated to produce administrative efficiencies, including a reduction in the number of federal, state and local corporate and taxation filings throughout the United States.

Other than the change of the name of Petitioner to RCN Telecom, there will be no changes made by RCN Telecom in company policies with respect to finances, operations, accounting, rates, programming, depreciation, operating schedules, maintenance and management, affecting the public interest, as a result of the Transaction.

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<sup>1</sup> RCN is authorized to serve the following municipalities: Bedminster Township, Bernardsville Borough, Bethlehem Township, Branchburg Township, Chatham Township, Chester Borough, Chester Township, Clinton Town, Clinton Township, Delaware Township, East Amwell Township, Far Hills Borough, Flemington Borough, Franklin Township (Hunterdon), Franklin Township (Somerset), Harding Township, Hillsborough Township, Lebanon Borough, Long Hill Township, Mendham Borough, Mendham Township, Millstone Borough, Montgomery Township, Peapack & Gladstone Borough, Raritan Township, Readington Township, Rocky Hill Borough, Tewksbury Township, and Union Township.

<sup>2</sup> Home Link Communications of Princeton, L.P. is the holder of municipal consents and Certificates of Approvals for Princeton Borough and Princeton Township, Mercer County.

There will be no change in the officers, directors or managers of Petitioner as a result of the Transaction. The officers of RCN will be the officers of RCN Telecom. RCN Corp. will own all of the stock of RCN Telecom.

Petitioner asserts the Transaction is an internal reorganization that will have no impact on the rates, programming or other matters concerning subscribers.

The official books and records of Petitioner are presently maintained at RCN Corporation headquarters, located at 105 Carnegie Center, Princeton, New Jersey 08540, and will continue to be maintained at that location after the Transaction.

Following submission of the petition, Petitioner provided limited written responses to written requests for additional information regarding the impact of the Transaction on RCN's New Jersey cable television customers. In addition, Petitioner provided information supporting the ability of RCN Telecom to continue to provide safe, adequate and proper service subsequent to the Transaction.

## DISCUSSION

The Board's Office of Cable Television ("OCTV") staff has reviewed this Transaction and the documents submitted by Petitioner, and has determined that, as a result of the terms of the Transaction, neither the RCN System's subscribers, the municipalities served, nor the public interest will be adversely affected by the Transaction. It should be noted that there is also no new lending or refinancing involved in the Transaction.

On June 18, 2001, the Ratepayer Advocate ("RPA") filed comments in this matter. RPA indicated that it did not object to Board approval of RCN's corporate restructuring nor the transfer of Certificates of Approval.

After a review of this matter, the Board FINDS the Transaction to be in accordance with law and in the public interest and HEREBY APPROVES, nunc pro tunc, the reorganization and the transfer of Certificates of Approval.

This Order is subject to the following conditions:

- 1) This Order shall not affect or in any way limit the exercise of the authority of the Board or the Office of Cable Television or the State of New Jersey in any future petition or in any proceeding regarding rates, cost of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioner.
- 2) This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of tangible or intangible assets now owned or hereinafter to be owned by Petitioner.
- 3) This Order shall not be construed as affecting pending rate proceedings involving Petitioner.

- 4) Petitioner shall notify the Board, in writing, immediately upon Board's approval of the date on which the Transaction was completed.
- 5) Petitioner shall file a Certification with the Board within thirty (30) days of the date of this Order that there are no significant changes in the executed closing documents or final terms from those terms and conditions described herein and/or submitted to the Board with the Petition. Any such material deviation in the executed closing documents shall render this Order voidable by the Board.
- 6) Petitioner shall file journal entries with the Board to record the Transaction approved herein within forty-five (45) days of the date of this Order.
- 7) In addition to the State assessment, pursuant to N.J.S.A. 48:5A-32, and municipal franchise fees, pursuant to N.J.S.A. 48:5A-30, due and owing by RCN on systems it presently owns and operates in New Jersey, RCN Telecom shall be liable for all State assessment and municipal franchise fees due and owing from the date of the closing relating to those subsequently acquired New Jersey systems it owns as of the statutory payment dates.
- 8) All franchise obligations, commitments and agreements shall continue in force in all respects under RCN Telecom ownership.
- 9) All of the obligations imposed upon RCN by the Certificates of Approval issued by the Board for the municipalities served by RCN shall be assumed by RCN Telecom.
- 10) All representations and commitments made by RCN to the municipalities serviced by the RCN System are fully enforceable as if set forth at length herein.
- 11) Approval of the Transfer of Assets and Certificates of Approval shall not constitute automatic approval of any business contract referenced in the Agreement or supporting documents, if Board approval, pursuant to N.J.S.A. 48:5A-1 et seq., would otherwise be required.
- 12) RCN Telecom shall provide, within 45 days of the date of this Order, a management plan, which the Petitioner shall utilize in addressing the following concerns, which the OCTV's Planning staff has received complaints on, including, but not limited to, the reported lack of responsiveness to municipalities serviced by RCN and the filing of a number of municipal applications past the expiration date of the existing Certificate of Approval.<sup>3</sup> The office is requesting specific timetables with respect to the above complaints for each municipality; the name of the person responsible for filing municipal applications and petitions and the person responsible for responding to municipal concerns and PEG

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<sup>3</sup> RCN Telecom has approximately 90% of its 31 municipalities in some phase of renewal.

access complaints (including address, telephone numbers and fax numbers).

- 13) RCN shall, within 30 days of the date of this Order, file with the Board information sufficient to demonstrate that there is no cross subsidization between its Cable TV, Telecommunications or other operations. This information shall include, but not be limited to, separate Balance Sheets, Income Statements and Statement of Cash Flow for the Cable Division, Telecommunications Division and any other divisions. In addition, RCN shall identify any shared common costs and provide allocation formulas supporting the distribution of these shared costs among the various divisions. RCN shall also include a detailed description of any shared assets, including, but not limited to, facilities, employees and equipment. RCN shall specifically disclose in detail any use by divisions other than Cable of any Cable TV Division's facilities and assets.

RCN Telecom shall comply with the New Jersey Cable Television Act and applicable sections of the New Jersey Administrative Code.

DATED: June 21, 2001

BOARD OF PUBLIC UTILITIES  
BY:

(signed)

CAROL J. MURPHY  
ACTING PRESIDENT

(signed)

FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)

FRANCES L. SMITH  
SECRETARY

**IN THE MATTER OF  
RCN OF NEW JERSEY, INC.  
FOR APPROVAL, NUNC PRO TUNC, OF REORGANIZATION AND  
TRANSFER OF CERTIFICATES OF APPROVAL  
DOCKET NO. CM00070509**

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